

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>CHILLY DIL CONSULTING INC., a</b>	§	
<b>Florida corporation,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>CIVIL ACTION NO. 3:14-cv-02749-N</b>
	§	
<b>JETPAY ISO SERVICES, LLC, a Texas</b>	§	
<b>limited liability company; JETPAY, LLC, a</b>	§	
<b>Texas limited liability company; JETPAY</b>	§	
<b>CORPORATION, a Delaware corporation;</b>	§	
<b>and TRENT R. VOIGT, an individual,</b>	§	
	§	
<b>Defendants.</b>	§	

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**BACKPAGE.COM, LLC’S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR  
LEAVE TO FILE AN AMENDED RESPONSE AND BRIEF IN OPPOSITION TO  
PLAINTIFF’S MOTION TO COMPEL**

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Non-party Backpage.com, LLC (“Backpage.com”) files this Reply in further support of its *Motion for Leave to File an Amended Response and Brief in Opposition to Plaintiff’s Motion to Compel Non-Party Backpage.com, LLC to Comply With Subpoena Duces Tecum and to Hold Backpage in Contempt, and Cross-Motion for Protective Order and Attorneys’ Fees* [Dkt. No. 133].

**REPLY**

There is more than a little irony in Plaintiff’s Response to non-party Backpage.com’s instant motion. Backpage.com’s motion asks to amend its response brief to address the Court’s denial of Plaintiff’s request to expand the case schedule – which ruling came after Backpage.com filed its original response. In Plaintiff’s words, prior to this, the parties (and therefore non-parties as well) “did not have any notice of the Court’s intended ruling and could not anticipate an

adverse ruling.” [Dkt. No. 132-1 at 8] In fact, Plaintiff filed its own motion to compel *after* the discovery cutoff and without seeking leave of the Court. [Dkt. 117]

The chronology is simple. *See* Dkt. 133. The Court’s Amended Scheduling Order extended the discovery completion deadline to June 3, 2016. [Dkt. 88]. Plaintiff filed its motion to compel on June 16, 2016. [Dkt. 117] Backpage.com filed its response to Plaintiff’s motion to compel on July 8, 2016, and the Court denied Plaintiff’s “emergency” motion to amend the complaint and extend the case schedule on July 12, 2016. On July 13, 2016, Backpage.com notified Plaintiff of its intent to amend its response to the motion to compel to address the Court’s ruling, and Plaintiff refused to consent to allowing an amended response. *Id.* (Certificate of Conference). Plaintiff’s reply in support of its motion to compel was due and was filed on July 22, 2016. [Dkt. 138]

It is well within the authority of the Court to permit a nonmovant to amend its response to a motion. *See, e.g., Nat’l Architectural Prods. Co. v. Atlas-Telecom Servs.—USA, Inc.*, 2007 WL 2051125, at \*4 (N.D. Tex. July 13, 2007) (noting that the court “granted the motion for leave to file an amended response” to a motion to dismiss).<sup>1</sup>

To the extent Plaintiff wanted an opportunity to address the factors in *Days Inn Worldwide, Inc. v. Sonia Invs.*, 237 F.R.D. 395, 398-99 (N.D. Tex. 2006), regarding motions to compel filed outside the discovery completion deadline, that full and fair opportunity existed back in June when Plaintiff could and should have filed a motion for leave of this Court to file a much-belated motion to compel. For reasons unexplained, Plaintiff did not.<sup>2</sup>

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<sup>1</sup> Case law cited by Plaintiff does not state otherwise. *See Burlington N. & Santa Fe Rwy. Co. v. Poole Chem. Co.*, 2004 WL 1926322, at \*7 (N.D. Tex. Aug. 27, 2004) (The court did *not* discuss whether the nonmovant asserted the argument (or attempted to assert the argument) at any point during the briefing schedule.), *aff’d sub nom. Burlington N. & Santa Fe Ry. Co. v. Poole Chem. Co.*, 419 F.3d 355 (5th Cir. 2005).

<sup>2</sup> Plaintiff could also have addressed the delay in its reply on the motion to compel. Again, Plaintiff simply did not. *See* Dkt. 138.

Dated: August 22, 2016

Respectfully Submitted,

/s/ Ann Marie Painter

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ATTORNEYS FOR BACKPAGE.COM, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing to all counsel of record for all parties via the Court's CM/ECF system on the 22nd day of August, 2016.

/s/ Ann Marie Painter

Ann Marie Painter